2008 Planning CoP Conference

Coastal Florida's 3 Regional Biological Opinions

- Subject
  - RBO with NMFS, Gulf of Mexico (FL to TX), Since 1995 (w/New Orleans and Galveston initially)
  - RBO with NMFS, South Atlantic (NC to FL), Since 1991
  - RBO with FWS (FL), Proposed Since Jan. 2006.
- Topics
  - Opportunities
  - Challenges and Conflicts
  - Lesson's Learned
- Authors
  - Kenneth Dugger (SAJ)
  - Terri Jordan (SAJ)
  - Doug Piatkowski (SAW)

Regional

Biological Assessment for FWS

Sand Placement & Shore Protection Coast of Florida

U.S. Army Corps of Engineers
Jacksonville District

REGIONAL BIOLOGICAL ASSESSMENT FOR FWS

I. Purpose: To streamline compliance with Endangered Species Act (ESA)

II. Activities Covered (Regulatory and Corps Civil Works):

- Placement of sand on the beach (shore protection or navigation)

- Other shore protection measures (e.g., groins, breakwaters).

III. Authorities Covered:
- Shore Protection
- Navigation
- Regulatory

(continued)

REGIONAL BIOLOGICAL ASSESSMENT FOR FWS

IV. Species Considered:

- Nesting Sea Turtles (5 species)
- Piping Plover (and Critical Habitat)
- Snowy Plover
- Red Knot
- Beach Mouse (several species)
- Manatee

(continued)

REGIONAL BIOLOGICAL ASSESSMENT FOR FWS

V. Geographic Scope: (Coast of Florida)

VI. Information Requirements:

- Past, present, and future sand placement or shore protection;
- ESA resources;
- Impacts to ESA resources; and
- Acceptable Means to Minimize Impact (Reasonable and Prudent Measures)

STATUS

Biological Assessment on hold pending resolution of “reasonable and prudent” “terms and conditions”.

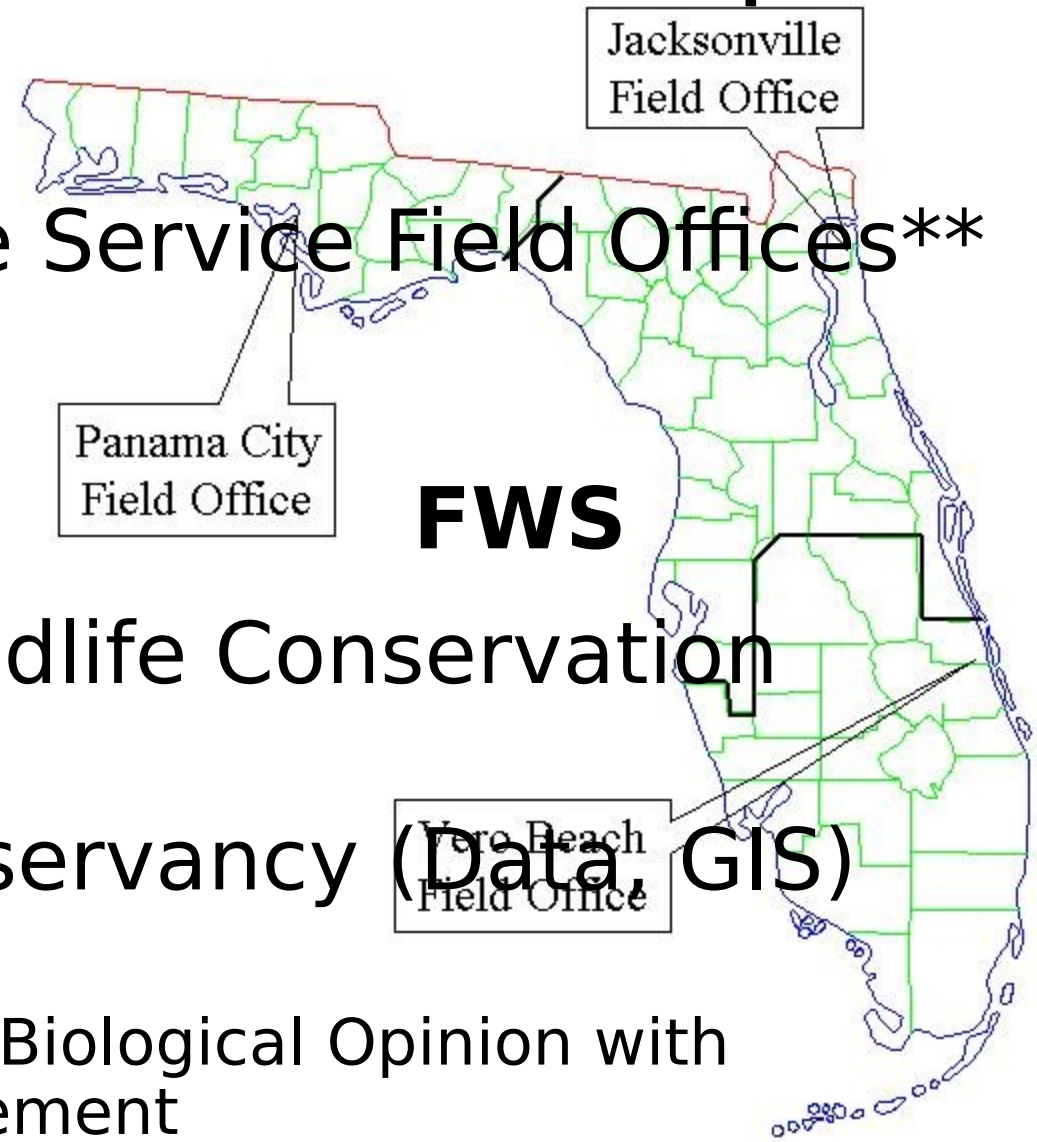
Collaboration (Corps)

- SAJ (Jacksonville District):
  - Planning Division
    - Environmental Branch (Coastal Section) *
    - Plan Formulation Branch (Coastal/Navigation Section)
  - Regulatory Division
  - Construction and Operations Division (Field Offices)
- SAM (Mobile District Civil Works Jurisdiction in Panhandle Florida)
- SAW (Wilmington District Brokered Work: Regional Biological Assessment)

* Lead Organization

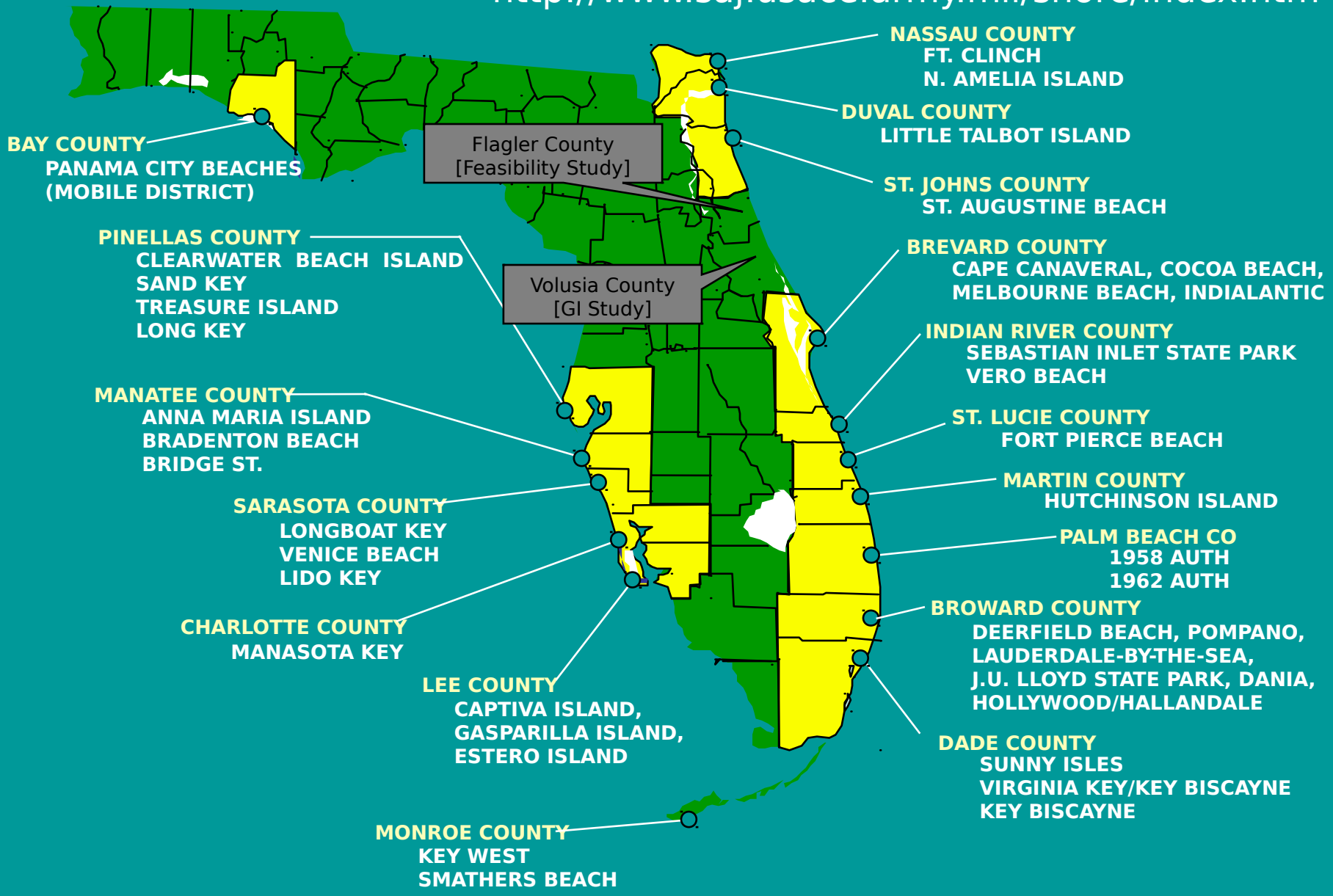
Collaboration (outside Corps)

- US Fish and Wildlife Service Field Offices**
  - Vero Beach
  - Jacksonville
  - Panama City
- Florida Fish and Wildlife Conservation Commission
- American Bird Conservancy (Data, GIS)



** FWS would issue a Biological Opinion with Incidental Take Statement

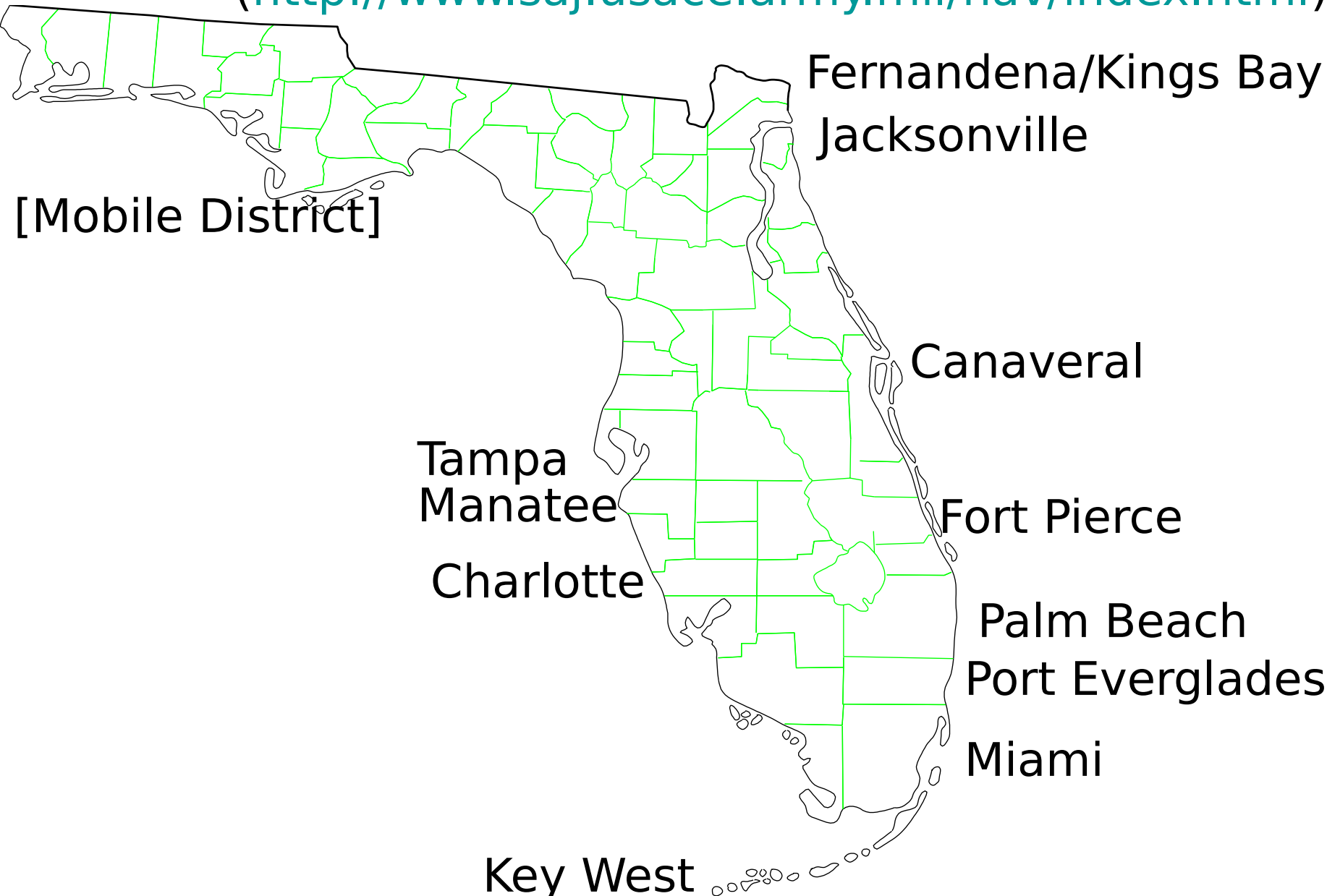
http://www.saj.usace.army.mil/shore/index.htm



AUTHORIZED SHORE PROTECTION PROJECTS

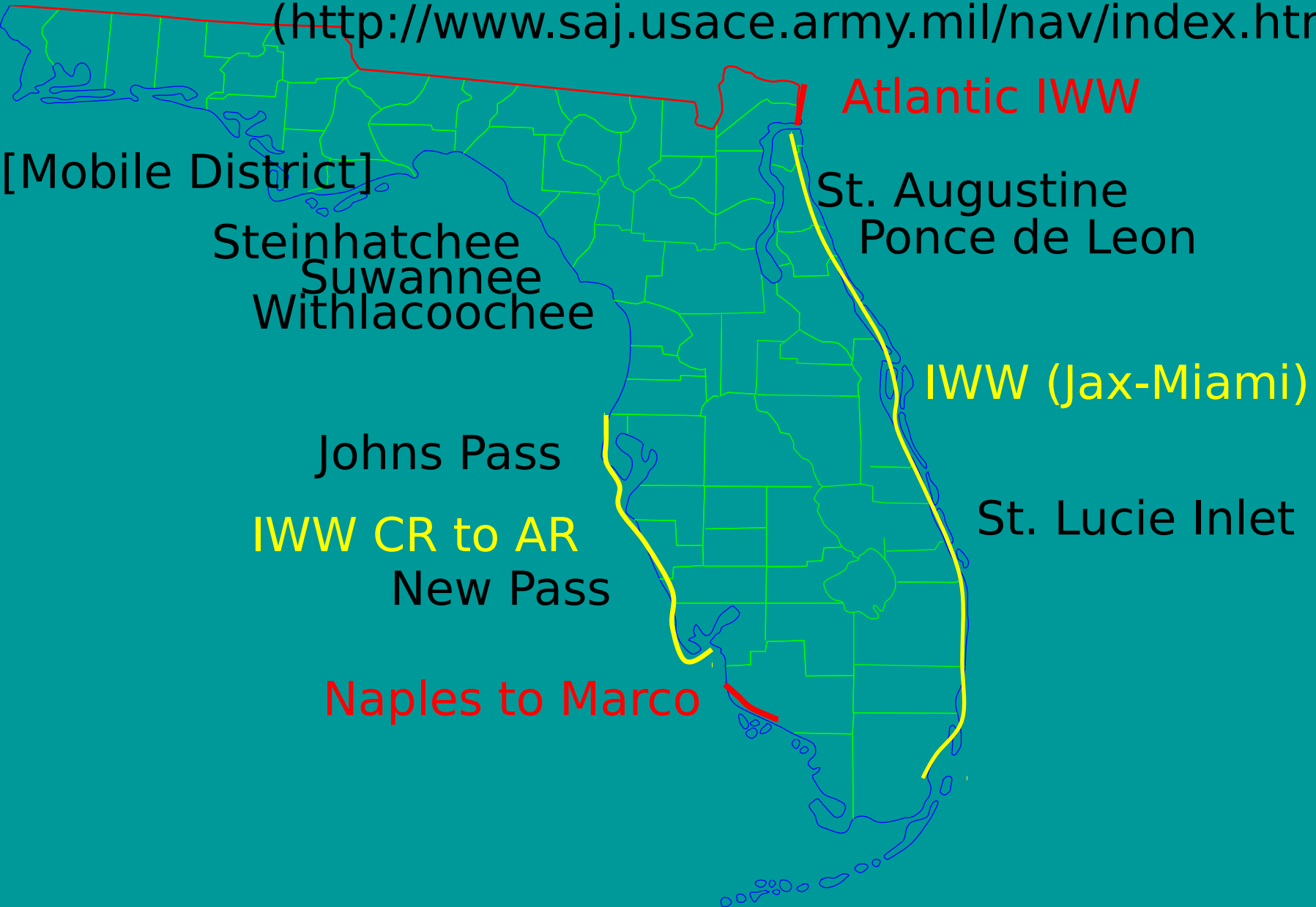
DEEP DRAFT NAVIGATION

(http://www.saj.usace.army.mil/nav/index.html)



SHALLOW DRAFT NAVIGATON

(http://www.saj.usace.army.mil/nav/index.html)



REGULATORY PERMITS

- Data
  - Location
  - Quantity
  - Length
  - Biological Opinion (date, Terms & Conditions)
  - Nests Relocated and Other Impacts?
- Time Frame
  - Since 2000?

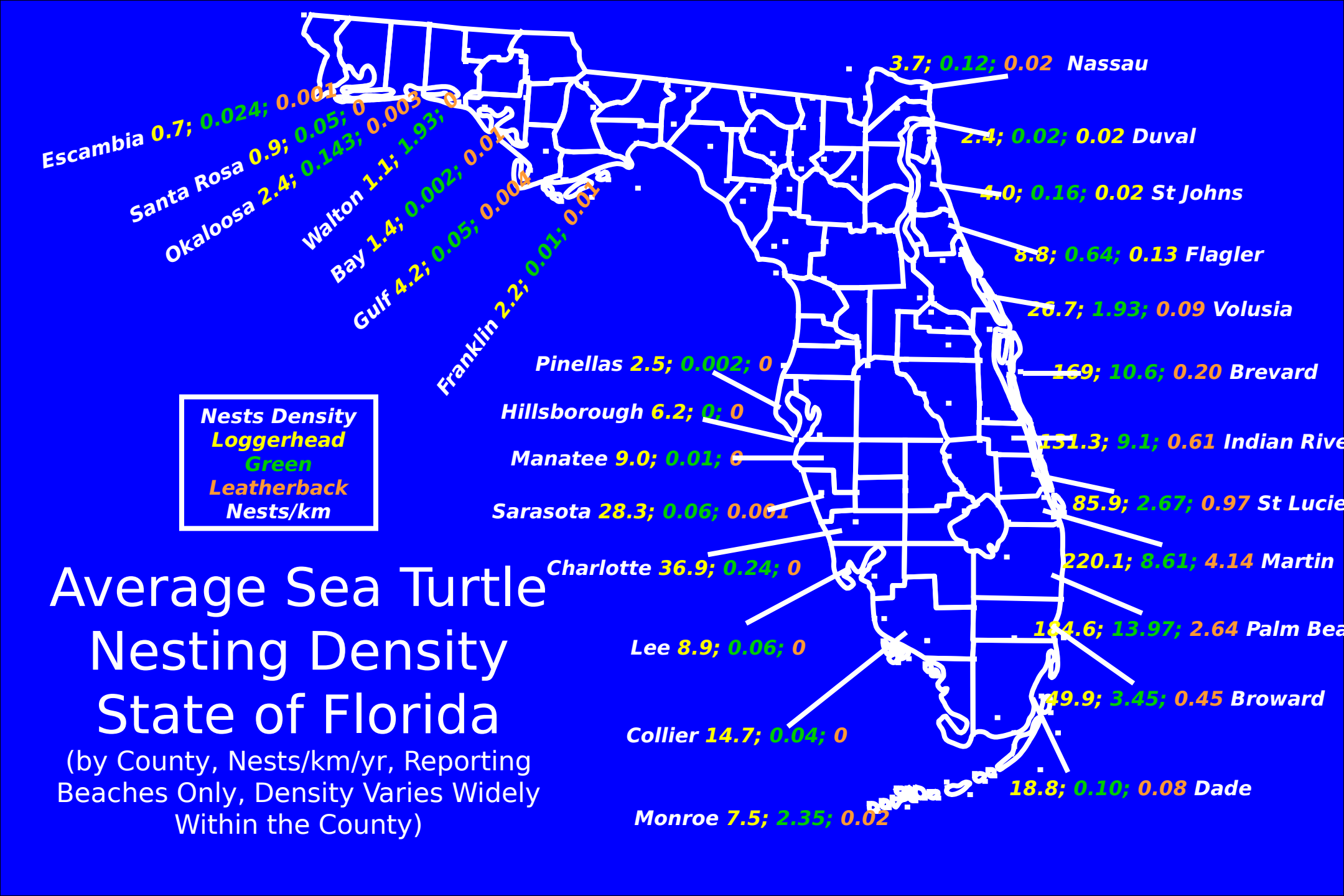
Schedule (completed)

- Scoping
  - Teleconference, 24 January 2006
  - Meeting, 7-8 March 2006 (FWS, FWC, SAM, SAJ, SAW)

- Prepare, Biological Assessment
  - Preliminary Draft BA (March – September 2006)
    - Gather and Compile Data (FWS, FWC, SAM, SAJ(RD+PD), SAW)
    - In-Progress Review Meeting (All) 13 July ‘06
    - Evaluate Impacts
    - Determine Measures
  - Interagency Workshop on “Terms and Conditions” 18-19 Sept ’07
  - Draft Terms and Conditions from FWS October 2007
  - Corps Comments January 2008
  - Revised Draft Terms and Conditions from FWS March 2008

Schedule (future)

- Corps Prepare, Biological Assessment
  - Corps Comments to FWS (May ’08)
  - Additional Workshop (June ’08)
  - Final BA (SAJ) (August ‘08)
- SAJ/SAM Submit BA to FWS (Sept ‘08)
- FWS Prepare Draft BO (Sept ‘08 – Dec ‘08)
- Corps Comments on Draft BO (Jan 2009)
- FWS Submits Final BO to Corps (March 2009)



Average Sea Turtle Nesting Density State of Florida

(by County, Nests/km/yr, Reporting Beaches Only, Density Varies Widely Within the County)

Shore Protection Project Impacts on Shoreline Erosion

Shoreline Hardened

Eminent Threat to Structures

Critically Eroded *

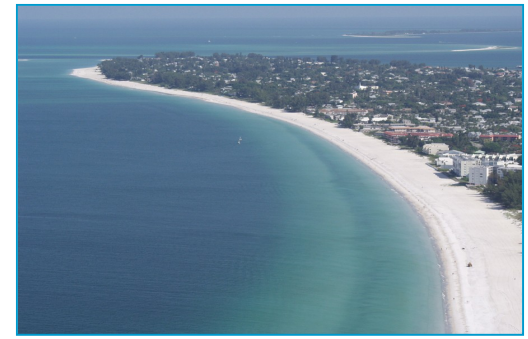
Moderate Erosion

Relatively Stable

Future Without Project

Current Condition

Future With Project



* Note: Shore protection activities typically occur on critically eroded shoreline in which “upland development, recreational interests, wildlife habitat, or important cultural resources are threatened”.

“Reasonable and Prudent”

- Is it a new or different Term & Condition?
- How does it benefit the species?
- Is it technically and engineeringly practicable?
- Is it within the authority and control of the Corps?
- Does it address the impacts of the project?
- Does it addresses the actions of the Corps (not the action or inaction of others)? >

ESA Sec 7 Consultation Handbook
"Reasonable and Prudent Measures"

- Within the "Action" Area
- Minor Change to the Project
- Reduces Level of Take
- Consistent with the Proposed Action's Basic Design, Location, Scope, Duration, & Timing
- Within the Legal Authority and Jurisdiction of the Agency or Applicant >

Proposed Resolution

- Draft Response - Over 60 Pages of Requirements, Recommendations, and Our Comments.
- Proposing EXCLUSION of Certain Species, Activities, and Geographic Areas
- Proposing Modification or Deletion of a Number of Requirements (Terms and Conditions) >

Proposed Exclusions

1. IMPORTANT MANATEE AREAS. FWS needs to better delineate the extent of Important Manatee Areas (both warm water refugia and non-warm water congregation areas) then Exclude.

2. SHORE BIRDS. Exclude Impacts to Piping Plover, its Critical Habitat, and other listed shore birds.

3. SAND FENCING. Sand fencing per se does not require a Corps permit and is not normally part of a Corps shore protection project.

4. ESCAPE CLAUSE. Any Other Activity for which the Corps would NOT be able to comply with the Terms and Conditions would require a project/activity specific biological opinion. >

Proposed Changes

Sea Turtles, General.

- BEACH SLOPE requirements are better defined and such is determined constructable (T&C 4).

- DUNE PROFILE is better defined and such is determined constructable (T&C 5).

- B:C FOR DUNE SYSTEM. Remove T&C 6 for a Benefit:Cost analysis to include a dune system. The plan formulation process is dictated by ER 1105-2-100 for Corps shore protection projects.

  For regulatory actions, a dune system may not be part of the applicant's project and applicant may not have the necessary real estate interest or authority to consider such.

- 2 YEARS NEST MONITORING. Should the Corps, sponsor, or applicant be required to conduct 2 years of nest monitoring (T&C 8)? >

Proposed Changes

Sea Turtles, Brevard through Broward Counties (southeast Florida).

- EXCEPTIONS. Corps should have the ability to request extension of construction window for those beach segments that are not high density nesting beaches (e.g., downdrift of inlets, highly eroded beaches) (T&C 1).

- BEACH FRONT LIGHTING. It is not reasonable to ask the Corps to go beyond conducting and reporting on visible light on the beach.

  Corps does not have authority to regulate artificial lighting from beach-front properties (T&C 8). >

Proposed Changes

Sea Turtles, Other Florida Counties.

- HIGHER VS. HIGH DENSITY. Sea Turtle window for "higher density" in portions of these counties is a new requirement. "Higher density" is probably still not "high density" nesting like in the SE FL counties. This may have to be negotiated.

- BEACH FRONT LIGHTING. It is not reasonable to ask the Corps to go beyond conducting and reporting on visible light on the beach.

  Corps does not have authority to regulate artificial lighting from beach-front properties (T&C 8). >

Proposed Changes

Sea Turtle, Reporting.

- A consolidated annual report may not be practicable.
- Would have to be collected from SAJ and SAM civil works, various non-Federal sponsors, and Regulatory.
- However, it would be possible for these various sources to provide individual project reports to FWS as they become available (T&C 11). >

Proposed Changes

Sea Turtle, Groin or Jetty Repair or Replacement.

- Removal of the Groin or Jetty would be a substantial undertaking.
  - Would require funding/authorization.
  - Possible impacts to shoreline and sediment processes.
  - This needs to be reworded or deleted (RPM 27, T&C 20).
- Certain other T&Cs need rewording or clarification.

Sea Turtle, Sand Fencing.

- Exclude sand fencing from the Regional Biological Opinion. >

Proposed Changes

BEACH MICE.

- CONSTITUENT ELEMENTS. A list of beaches considered habitat for beach mice was provided.

  Should this be further limited to those area containing the "constituent elements" (e.g. to the vegetated dune and not on the sandy unvegetated beach)?

- MONITORING & MANAGEMENT. Ongoing [perpetual] "beach mouse protection, monitoring, and habitat protection, maintenance, and restoration"

  Goes beyond the scope of any civil works project and is probably not a reasonable requirement through the regulatory process (RPM 1).

Proposed Changes

(Continued) BEACH MICE.

- EXCLUSION AREA. The exclusion area for equipment may not be possible on narrow eroded beach segments (T&C 2).

- CATS. Control of free-ranging feral or domestic cats is not within the authority and control of the Corps (T&C 8).

- Certain other T&Cs need rewording or clarification >

Proposed Changes

SHORE BIRDS IN GENERAL. Exclude all from the Regional Biological Opinion.

MANATEES IN GENERAL. Better Delineate and then Exclude all "Important Manatee Areas" from the Regional Biological Opinion. >

Next Steps

- Internal Environmental Staff SAJ/SAM (done)
- Other Corps Elements (Regulatory, Engineering, Project Management, ConOps, Office Counsel)
- Submit Final Comments to FWS
- Another Interagency Meeting to Discuss
- Submit BA to FWS
- FWS Provides Draft BO
- Review and Comment on Draft BO
- FWS Issues Final BO >

Lessons Learned

- It Takes Time and a Lot of Coordination (internal & external)
- Could Result in Additional “Terms and Conditions”
- May Not Streamline and Expedite the Process as Much as Hoped
- Complexity Increases with Geographic Area, Species Covered, and Activities Covered
- Some Issues are Better Left to the Project Specific Biological Opinions
- Be Willing to Exclude Areas, Species, and Activities from the Regional Biological Opinion
- Have an “Escape Clause” for When “Terms and Conditions” Cannot be Met >